ON FILED
OCT 30

No. 82-453

IN THE

Supreme Court of the United States

October Term, 1982

FRANCIS OIL & GAS, INC., CURTIS S. GREEN, DAVE R. SYLVAN, GEORGE D. DALY, GEORGE B. KAISER and DON H. NELSON, individually and on behalf of all other persons similarily situated, collectively and as a class,

Petitioners,

v.

EXXON CORPORATION and MARATHON OIL COMPANY, individually and on behalf of all other persons similarily situated, collectively and as a class,

Respondents.

JOINT COMBINED MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OUT OF TIME (AND AMICUS CURIAE BRIEF IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI) OF THE TEXAS INDEPENDENT PRODUCERS LEGAL ACTION ASSOCIATION AND THE NORTH TEXAS OIL AND GAS ASSOCIATION

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Respondents.

JOINT MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OUT OF TIME

Comes now the Texas Independent Producers Legal Action Association and the North Texas Oil and Gas Association and move this Court to permit them to file their brief as amicus curiae in support of the Petition for a Writ of Certiorari currently before this Court in this cause. As discussed in the brief combined with this motion, both movants are associations of independent oil and gas producers and others interested in the oil and gas industry. The movants' members are directly affected by the decision of the Temporary Emergency Court of Appeals below and believe that the views set forth in the Combined Brief may be useful to the Court in its disposition of the Petition for a

Writ of Certiorari. The petitioners have consented to this motion; the respondents oppose the motion.

Respectfully submitted,

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EXXON CORPORATION and MARATHON OIL COMPANY, individually and on behalf of all other persons similarily situated, collectively and as a class,

Respondents.

JOINT BRIEF IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

The Texas Independent Producers Legal Action Association and the North Texas Oil and Gas Association, as amicus curiae, respectfully submit their Brief urging this Court to grant a Writ of Certiorari to review the judgment of the Temporary Emergency Court of Appeals of the United States in *Francis Oil & Gas, Inc. et. al. v. Exxon Corporation, et. al.*, 687 F.2d 484 (TECA 1982), entered on August 16, 1982.

INTEREST OF TEXAS INDEPENDENT PRODUCERS LEGAL ACTION ASSOCIATION

The Texas Independent Producers Legal Action Association ("TIPLAA") is an association formed under

Texas law in 1978 with membership of approximately 150. Its membership consists primarily of Texas independent oil and gas producers. TIPLAA was formed to provide a vehicle for representation of Texas independent oil and gas producers in litigation and research matters. TIPLAA is specifically barred from legislative activities. The president of TIPLAA is Robert Emerson Vinson, whose address is 800 Oil and Gas Building, Wichita Falls, Texas, 76301.

INTEREST OF NORTH TEXAS OIL AND GAS ASSOCIATION

The North Texas Oil and Gas Association ("NTOGA") was formed in 1930 and has approximately 800 members. Its membership is primarily drawn from North Texas area businesses, including independent producers, geologists, landmen, royalty owners, trucking companies, accountants, and banks which have an interest in the oil and gas industry. Its president is John Bennett, and its Executive Vice President is Tom Haywood. The association offices are located at 1106 City National Building, Wichita Falls, Texas, 76301.

The decision of TECA herein challenged is of a national significance and will have a significant impact on the oil and gas industry. The decision will have a particularly significant impact on independent oil and gas producers, who currently own a very substantial portion of stripper oil production in this country. Therefore, TIPLAA and NTOGA, on behalf of their members, file this amicus curiae brief in support of the Petition for a Writ of Certiorari. The TECA decision raises substantial federal issues which should be resolved by this court.

ARGUMENT

This Court should grant the Petition for a Writ of Certiorari to review the judgment of the Temporary Emergency Court of Appeals in this case. TECA has decided issues of substantial national economic significance. Further, TECA's decision is contrary to both the intent of the regulatory draftsmen who drafted the imputed stripper oil rule and the common understanding in the industry.

First, it is quite clear that TECA's decision is contrary to the regulatory intent. The imputed stripper well oil regulation was intended to remove the disincentive for stripper well owners to consent to unitization. Prior to adoption of the imputed stripper well rule, the creation of a unit would have destroyed the "stripper well property" quality of individual tracts because of aggregation of production, threatening the loss of higher prices available as stripper well oil. In the course of drafting the regulation, the drafters made the conscious decision to permit state law to govern the allocation of the imputed stripper well oil among the tract participants. TECA's decision essentially removes state law from that determination. TECA's decision hinders the intent of the regulation to remove significant disincentives for stripper tract owners to enter into units. For this reason, the Court should grant certiorari and review the decision of TECA.

Second, the decision of TECA runs contrary to the customary understanding and practice in the oil and gas industry. Because it runs contrary to the customary understanding in the oil and gas industry, TECA's decision will impact substantially on well established relationships that, prior to TECA's decision, remained unquestioned. It

has been the usual and customary practice in the oil and gas industry to assume that absent specific provision in the unit agreement, the stripper tract owner retains the imputed stripper oil derived from his tract under the regulations.

Third, this Court should review the TECA decision in order to set forth TECA's jurisdictional limits. TECA's decision in this case constitutes a significant expansion of its jurisdiction as construed by other courts of appeal.

CONCLUSION

For the reasons set forth above, TIPLAA and NTOGA respectfully request this Court to grant petitioners' Petition for a Writ of Certiorari.

Respectfully submitted,

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CERTIFICATE OF MAILING

I, Robert Emerson Vinson, certify that on this 29th day of October, 1982, placed in the United States mail at Washington, D.C. three true and correct copies of the above and foregoing Joint Combined Motion for Leave to File Amicus Curiae Brief Out of Time (and Amicus Curiae Brief in Support of the Petition for a Writ of Certiorari) of the Texas Independent Producers Legal Action Association and the North Texas Oil and Gas Association, with correct postage prepaid thereon, addressed to:

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